

No. 5:23-CV-136-D

Defendants.

Case 5:23-cv-00136-D-RJ Document 134 Filed 08/23/23 Page 1 of 4

within the state of North Carolina and throughout the world via the internet. Epic Tech did not license or otherwise authorize Defendants to use Epic Tech's software, and thus, Epic Tech contends Defendants' conduct intentionally violates Epic Tech's intellectual property rights and both federal and state law. Compl. [DE-1] at 4–5, 16 ¶¶ 1–2, 6, 56.

Plaintiffs allege that Hill is a manager of Defendant Blue Magic Casino, which has a physical location at 837 Starling Way, Rocky Mount, NC 27803 and at least one online café on Facebook, and that the Blue Magic Casino Defendants market, distribute, and operate the infringing Phantom Software via their virtual and physical presence. *Id.* ¶¶ 27–28, 184–85. Plaintiffs allege that the Blue Magic Casino Defendants directly infringe Epic Tech's copyrights and trademarks through their operation of the infringing Phantom Software and indirectly infringe Epic Tech's unregistered trademarks by inducing direct infringement of the Phantom Software end users. *Id.* ¶¶ 214, 248, 250. Plaintiffs also allege contributory and vicarious copyright infringement against all Phantom Defendants, which include Blue Magic Casino and Hill. *Id.* ¶¶ 287–308.

Hill's motion states that he "has no idea what's going on with this complaint/action," he does not "own any company that uses any of the plaintiffs['] gaming systems etc.," and he does not "own any gaming company at all." [DE-63]. Plaintiffs responded that Hill cites no legal grounds for dismissal of the claims against him and that Hill failed to address the allegations of the verified complaint that he is associated with Defendant Blue Magic Casino as a manager and that Blue Magic offers at least the counterfeit Phantom Software at their location. [DE-103]; [DE-1] ¶¶ 27–28, 184–85.

Even giving Hill's *pro se* filing the liberal construction due, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), Hill has not challenged any of the legal or factual allegations in the complaint. While Hill claims to not be the owner of an infringing company, Hill did not challenge the

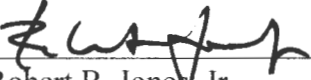
allegations that he is the manager of Defendant Blue Magic Casino or that Blue Magic Casino and Hill engaged in or facilitated infringing conduct. *See CNC Software, LLC v. NVO Machining, LLC*, No. 822CV00089JLSADS, 2023 WL 4680923, at *4 (C.D. Cal. May 31, 2023) (“[O]ne who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another, may be held liable as a ‘contributory’ infringer.”) (quoting *A&M Recs., Inc. v. Napster, Inc.*, 239 F.3d 1004, 1019 (9th Cir. 2001)). Furthermore, Hill failed to attend the evidentiary hearing and thus, appears to lack intent to prosecute his motion. Accordingly, it is recommended that the motion to remove Hill’s name from the civil action, [DE-63], be denied, and the court set a deadline for Hill to answer the complaint.

IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on the parties. You shall have until **Wednesday, September 6, 2023**, to file written objections to the Memorandum and Recommendation. The presiding district judge must conduct his or her own review (that is, make a de novo determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. *See, e.g.*, 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C.

If you do not file written objections to the Memorandum and Recommendation by the foregoing deadline, you will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, your failure to file written objections by

the foregoing deadline may bar you from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. *See Wright v. Collins*, 766 F.2d 841, 846–47 (4th Cir. 1985).

Submitted, this 23 day of August, 2023.



Robert B. Jones, Jr.
United States Magistrate Judge